

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SAN DIEGO GAS & ELECTRIC COMPANY (U 902 M) for Authority to Incur Additional Indebtedness for Working Capital Purposes in an Aggregate Principal Amount Not to Exceed \$800 million, Inclusive of Amounts Otherwise Authorized by Public Utilities Code Section 823, at any one time outstanding.

Application 00-11-025
(Filed November 9, 2000)

O P I N I O N**1. Summary**

In response to a petition to modify Decision (D.) 01-02-011 filed by San Diego Gas & Electric Company (SDG&E), SDG&E is authorized to issue First Mortgage Bonds.

2. Background

Since June 2000, there has been a huge and sustained increase in the price of wholesale power. SDG&E initially passed through the increased price for wholesale power to its retail customers, causing customers' electric bills to soar.

On September 6, 2000, the Governor signed Assembly Bill (AB) 265.¹ This legislation established a rate ceiling of \$0.065 per kilowatt hour on the energy component of electric bills for SDG&E's residential, small commercial, and

¹ Stats. 2000, Ch. 328.

streetlighting customers. The rate ceiling was retroactive to June 1, 2000, and continues through December 31, 2002, although the Commission may extend the rate ceiling through December 2003. As a result of the rate ceiling, SDG&E's costs for electric power have exceeded its revenues. The excess of SDG&E's cost over its revenues is referred to hereafter as the "AB 265 undercollection."

On November 9, 2000, SDG&E filed Application (A.) 00-11-025 for authority under Pub. Util. Code § 851 and § 816 et seq.,² to issue \$800 million of additional debt, including First Mortgage Bonds. SDG&E requested authority to use most of the new debt to finance its AB 265 undercollection, but SDG&E also requested authority to use the debt for other purposes as well. There were no protests or responses to A.00-11-025.

On February 8, 2001, the Commission issued D.01-02-011. Among other things, D.01-02-011 authorized SDG&E to issue \$800 million of additional debt to finance its AB 265 undercollection. The decision also authorized SDG&E to use \$200 million of the \$800 million for other purposes, but only to the extent that SDG&E does not need the \$200 million to finance its AB 265 undercollection. However, the decision denied SDG&E's request for authority to issue additional First Mortgage Bonds or any other debt secured by a pledge of SDG&E's assets.

On February 14, 2001, SDG&E filed a petition to modify D.01-02-011 (Petition) pursuant to Rule 47 of the Commission's Rules of Practice and Procedure (Rule). In its Petition, SDG&E asks the Commission to modify D.01-02-011 to allow SDG&E to issue First Mortgage Bonds to (1) finance its

² All statutory references are to the Public Utilities Code. Section 851 requires a utility to obtain authority from the Commission to encumber property that is useful in the

Footnote continued on next page

AB 265 undercollection, and (2) provide working cash.³ Notice of the Petition appeared in the Commission's Daily Calendar on February 20, 2001. There were no responses to the Petition.⁴

On March 6, 2001, assigned Administrative Law Judge (ALJ) Kenney issued a ruling that required SDG&E to file supplemental information regarding its Petition. SDG&E filed a supplement containing the required information on March 12, 2001. SDG&E also submitted other information pursuant to instructions from the assigned ALJ.

3. SDG&E's Petition

SDG&E asks the Commission to modify D.01-02-011 to allow SDG&E to issue additional First Mortgage Bonds to (1) finance its AB 265 undercollection, and (2) provide working cash. SDG&E states that the modification is necessary because lenders are unwilling to accept SDG&E's unsecured debt at this time due to the large size of the AB 265 undercollection, uncertainty about whether SDG&E will be allowed to recover its AB 265 undercollection, and recent defaults by other California electric utilities. SDG&E asserts that because it cannot issue unsecured debt at this time, it is vital for the Commission to modify D.01-02-011 to authorize SDG&E to issue First Mortgage Bonds. SDG&E adds that even if it could issue unsecured debt, First Mortgage Bonds would have a substantially lower rate of interest than unsecured debt.

performance of the utility's duties to the public. Section 816 et seq., require a utility to obtain authority from the Commission to issue debt or equity.

³ Petition of San Diego Gas & Electric Company for Modification of D.01-02-011, p. 2.

⁴ Along with its Petition, SDG&E filed a motion to waive the 30-day period that parties have under Rule 47(f) to file responses to the Petition. SDG&E's motion is moot, since no responses were filed within the 30-day period.

SDG&E states that its AB 265 undercollection was \$681 million as of February 28, 2001. To finance its AB 265 undercollection, SDG&E has relied on three sources of funds. First, SDG&E has used internal sources of capital. For example, SDG&E has launched a cash-conservation program that includes sales of nonessential property, containment of new hiring, reduction of outside contractors, and deferral of information systems and construction projects.⁵ Second, SDG&E has drawn down its bank lines of credit. SDG&E obtained these lines of credit prior to the recent cutoff of credit to California electric utilities. Finally, SDG&E has used funds obtained from the repayment of a loan that SDG&E had previously made to its parent company, Sempra Energy.

SDG&E asserts that the existing financing arrangements for its AB 265 undercollection have drained SDG&E of its liquidity. As a result, SDG&E states that it has an urgent need to issue additional debt to provide SDG&E with funds to meet its financial obligations. For example, SDG&E states that it must repay \$50 million of bank line borrowings in the next three months. In addition, SDG&E will soon have to repay \$200 million of over collections in other balancing accounts. SDG&E also has a growing backlog of deferred maintenance and investments that need to be funded.

SDG&E states that if it would help to convince the Commission to authorize SDG&E to issue First Mortgage Bonds, SDG&E could accept (1) a prohibition on issuing any forms of secured debt other than First Mortgage Bonds, and (2) a reduction in the amount of debt authorized by D.01-02-011 from \$800 million to \$600 million, not including amounts automatically authorized by

⁵ SDG&E's SEC Form 10-K for the year 2000.

§ 823.⁶ SDG&E states that it can accept a lower amount of debt because of the enactment of AB 1X,⁷ which should significantly reduce the future growth of its AB 265 undercollection.⁸

SDG&E states that it has unused authority under D.93-09-069 to issue \$138.5 million of debt, including First Mortgage Bonds. According to SDG&E, it cannot use this authority to finance its AB 265 undercollection, since the debt is restricted to the purposes authorized by D.93-09-069. These purposes include the construction, completion, extension, or improvement of SDG&E's facilities.

4. Discussion

In D.01-02-011, we found that SDG&E has a need to issue additional debt to finance its AB 265 undercollection. Accordingly, D.01-02-011 authorized SDG&E to issue up to \$800 million of additional debt for this purpose. However, we prohibited SDG&E from issuing First Mortgage Bonds or other secured debt to finance its AB 265 undercollection.

SDG&E's need to issue additional debt to finance its AB 265 undercollection has not abated. SDG&E has demonstrated that First Mortgage Bonds are the only viable option available to SDG&E at this time for financing its AB 265 undercollection. SDG&E has also shown that First Mortgage Bonds provide a cost effective way for financing its AB 265 undercollection. Therefore,

⁶ Section 823(c) allows a utility to issue short-term (s/t) notes without the consent of the Commission, so long as the total amount of the utility's outstanding s/t notes does not exceed 5% of the par value of the utility's other outstanding securities.

⁷ Stats. 2001, Ch. 4.

⁸ The Governor signed AB 1X on February 1, 2001. Among other things, AB 1X authorized the California Department of Water Resources to purchase electric power and sell the power to SDG&E's retail end users.

we conclude that D.01-02-011 should be modified to provide SDG&E with authority under § 851 and § 816 et seq., to issue First Mortgage Bonds for the purpose of financing its AB 265 undercollection.⁹ As required by General Order 24-B, SDG&E shall maintain records to show that all proceeds obtained from debt issued under the authority granted by this decision have been used only for the purposes authorized by this decision.

We accept SDG&E's offer to modify D.01-02-011 to (1) reduce the amount of debt authorized by the decision from \$800 million to \$600 million, not including debt that SDG&E may issue pursuant to § 823¹⁰; and (2) prohibit SDG&E from issuing any forms of secured debt other than First Mortgage Bonds. Except for the modifications to D.01-02-011 adopted by today's decision, D.01-02-011 remains in full force and effect. Today's decision makes no findings regarding the reasonableness of (1) SDG&E's AB 265 undercollection, or (2) the rates, terms, or conditions of any debt issued by SDG&E.

Finally, we deny SDG&E's request to modify D.01-02-011 to provide SDG&E with authority to issue First Mortgage Bonds to obtain working cash.

⁹ Pursuant to § 817(c), the Commission may authorize SDG&E to issue First Mortgage Bonds for the "improvement or maintenance of its service." Pursuant to § 817(d) and § 817 (g), the Commission may authorize SDG&E to issue First Mortgage Bonds to discharge, refund, retire, or exchange debt previously issued by SDG&E to finance its AB 265 undercollection.

¹⁰ This decision does not alter SDG&E's authority under D.01-02-011 to use \$200 million of the unsecured debt authorized by D.01-02-011 for the purposes authorized by D.97-11-012, but only to the extent that SDG&E does not need the \$200 million to finance its AB 265 undercollection.

The purposes for which a utility may issue long-term debt are prescribed by § 817, and do not include working cash.¹¹

5. Public Utilities Code Section 1904(b)

Whenever the Commission authorizes a utility to issue debt, the Commission is required to charge and collect a fee in accordance with § 1904(b). Section 1904(b) states as follows:

For a certificate authorizing an issue of bonds, notes, or other evidences of indebtedness, two dollars (\$2) for each one thousand dollars (\$1,000) of the face value of the authorized issue or fraction thereof up to one million dollars (\$1,000,000), one dollar (\$1) for each one thousand dollars (\$1,000) over one million dollars (\$1,000,000) and up to ten million dollars (\$10,000,000), and fifty cents (\$0.50) for each one thousand dollars (\$1,000) over ten million dollars (\$10,000,000), with a minimum fee in any case of fifty dollars (\$50). No fee need be paid on such portion of any such issue as may be used to guarantee, take over, refund, discharge, or retire any stock, bond, note or other evidence of indebtedness on which a fee has theretofore been paid to the commission. If the commission modified the amount of the issue requested in any case and the applicant thereupon elects not to avail itself of the commission's authorization, no fee shall be paid, and if such fee is paid prior to the issuance of such certificate by the commission, such fee shall be returned.

In D.01-02-011, the Commission authorized SDG&E to issue \$800 million of additional debt. Accordingly, D.01-02-011 ordered SDG&E to remit a fee of \$406,000 pursuant to § 1904(b) to the Commission's Fiscal Office within a

¹¹ D.93-06-069, 1993 Cal. PUC LEXIS 326, *13.

reasonable period of time, not to exceed six months from the effective date of D.01-02-011.¹² SDG&E has yet to pay the fee.

This decision modifies D.01-02-011 to reduce the amount of debt that SDG&E is authorized to issue from \$800 million to \$600 million. As a result, the fee that SDG&E is required to remit pursuant to § 1904(b) is likewise reduced from \$406,000 to \$306,000.¹³ SDG&E shall remit the revised fee of \$306,000 to the Commission's Fiscal Office within a reasonable period of time, not to exceed six months from the effective date of D.01-02-011. If necessary, SDG&E may use the procedure in Rule 48 to request an extension of time to pay the fee. Any extension of time beyond six months will be subject to interest based on the 3-month commercial paper rate retroactive to the effective date of D.01-02-011. Failure by SDG&E to remit the fee shall render void all authority granted herein.

6. Category and Need for Hearing

In Resolution ALJ 176-3051, dated November 2, 2000, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that a hearing is not necessary. In D.01-02-011, the Commission affirmed and finalized the preliminary determinations of ALJ 176-3047. SDG&E's petition to modify D.01-02-011 does not affect the Commission's final determinations regarding category or need for hearing.

¹² The fee was determined as follows: $(\$2 \times (1,000,000/1,000)) + (\$1 \times (9,000,000/1,000)) + (\$0.50 \times (790,000,000/1,000)) = \$406,000$.

¹³ The fee was determined as follows: $(\$2 \times (1,000,000/1,000)) + (\$1 \times (9,000,000/1,000)) + (\$0.50 \times (590,000,000/1,000)) = \$306,000$.

7. Public Utilities Code Section 311(g)

Section 311(g)(1) requires the draft decision in this proceeding to be (i) served on all parties, and (ii) subject to at least 30 days of public review and comment prior to a vote of the Commission. However, § 311(g)(2) allows the 30-day period to be reduced or waived upon the stipulation of all parties. On February 12, 2001, SDG&E, the only party to this proceeding, filed a motion to waive the 30-day comment period on the draft decision.¹⁴

Findings of Fact

1. In D.01-02-011, the Commission (i) granted SDG&E's request for authority to issue \$800 million of additional unsecured debt to finance its AB 265 undercollection, and (ii) denied SDG&E's request for authority to issue additional First Mortgage Bonds or other secured debt.

2. In its Petition, SDG&E asks the Commission to modify D.01-02-011 to allow SDG&E to issue First Mortgage Bonds to (i) finance its AB 265 undercollection, and (ii) provide working cash.

3. SDG&E is willing to have the Commission modify D.01-02-011 to (i) prohibit SDG&E from issuing any forms of secured debt other than First Mortgage Bonds, and (ii) reduce the amount of debt that SDG&E is authorized to issue by D.01-02-011 from \$800 million to \$600 million, not including amounts that SDG&E may issue pursuant to § 823(c).

4. SDG&E states that its AB 265 undercollection was \$681 million as of February 28, 2001.

¹⁴ SDG&E's motion is granted to the extent the Commission's actions in today's decision comport with the actions requested by SDG&E in its motion.

5. SDG&E has a need to issue additional debt to finance its AB 265 undercollection.

6. SDG&E represents that secured debt is the only type of debt that it can currently issue to finance its AB 265 undercollection.

7. SDG&E represents that First Mortgage Bonds would carry a substantially lower rate of interest than unsecured debt.

8. D.01-02-011 ordered SDG&E to pay a fee of \$406,000 pursuant to § 1904(b) for authority to issue \$800 million of debt. SDG&E has not yet paid the fee.

9. On February 12, 2001, SDG&E, the only party to this proceeding, filed a motion to waive the 30-day comment period on the draft decision.

Conclusions of Law

1. The Commission has authority under § 851 and § 816 et seq., to authorize SDG&E to issue First Mortgage Bonds to finance its AB 265 undercollection.

2. SDG&E has shown that its request to modify D.01-02-011 to provide SDG&E with authority to issue First Mortgage Bonds to finance its AB 265 undercollection is reasonable and should be granted.

3. The Commission should accept SDG&E's offer to (i) prohibit SDG&E from issuing any secured debt other than First Mortgage Bonds, and (ii) reduce the amount of debt authorized by D.01-02-011 from \$800 million to \$600 million.

4. Pursuant to § 817, a utility cannot issue long-term debt, including First Mortgage Bonds, to obtain working cash.

5. SDG&E's request to modify D.01-02-011 to provide SDG&E with authority to issue First Mortgage Bonds for working cash should be denied.

6. D.01-02-011 should be modified to reduce the § 1904(b) fee that SDG&E is required to pay by the decision from \$406,000 to \$306,000. SDG&E should remit \$306,000 to the Commission's Fiscal Office no later than six months after the

effective date of D.01-02-011. Failure by SDG&E to remit the fee should render void all authority granted herein.

7. Rule 48 allows SDG&E to request an extension of time to pay the § 1904(b) fee. If SDG&E requests and receives such an extension, SDG&E should pay interest on the fee retroactive to the effective date of D.01-02-011. The interest should be based on the 3-month commercial paper rate published in Federal Reserve Statistical Release G.13.

8. The 30-day period for public review and comment on the draft decision set forth in § 311(g)(1) should be waived pursuant to § 311(g)(2).

9. The following order should be effective immediately so that its provisions may be implemented expeditiously.

O R D E R

IT IS ORDERED that:

1. Pursuant Pub. Util. Code § 851 and § 816 et seq., San Diego Gas & Electric Company (SDG&E) is authorized to issue up to \$600 million of First Mortgage Bonds for the exclusive purpose of financing the undercollection of SDG&E's cost to procure electric power for its retail customers caused by the rate ceiling established by Assembly Bill 265.

2. The amount of debt that SDG&E is authorized to issue pursuant to Decision (D.) 01-02-011 is reduced from \$800 million to \$600 million, excluding debt that SDG&E may issue pursuant to Pub. Util. Code § 823. The total amount of debt that SDG&E issues pursuant to D.01-02-011 and this decision shall not exceed the principal amount of \$600 million.

3. SDG&E shall not issue any forms of secured debt other than First Mortgage Bonds.

4. SDG&E's request for authority to issue First Mortgage Bonds for working cash is denied.

5. Decision 01-02-011 is modified to reduce the fee that SDG&E is required to pay pursuant to Pub. Util. Code § 1904(b) from \$406,000 to \$306,000. SDG&E shall remit \$306,000 to the Commission's Fiscal Office within a reasonable time, not to exceed six months from the effective date of D.01-02-011. Failure by SDG&E to remit the fee shall render void all authority granted herein.

6. If SDG&E requests and receives an extension of time beyond six months to pay the fee of \$306,000 required Pub. Util. Code § 1904(b), SDG&E shall pay interest on the fee retroactive to the effective date of D.01-02-011. The rate of interest shall be based on the 3-month commercial paper rate published in Federal Reserve Statistical Release G.13.

7. The 30-day period for public review and comment on the draft decision set forth in Pub. Util. Code § 311(g)(1) is waived pursuant to § 311(g)(2).

8. SDG&E's petition to modify D.01-02-011 is granted and denied to the extent set forth in the previous Ordering Paragraphs.

9. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.